MEMORANDUM

TO: Interested Parties

FROM: Jim Odiorne

DATE: January 10, 2006

RE: Market Analysis Program

At our meeting on January 5, 2006, you asked for an outline of how our proposed legislation (Z-1053) differs from the NAIC model. Without attempting to identify each change required to conform the model to Washington law and practice, I believe the following outlines major changes from the NAIC model.

Throughout our proposal, we attempted to distinguish between the familiar term market conduct examination currently used and new activity by deleting the word "conduct" except where specifically relating to an examination. Similarly we changed the term applied to OIC staff working in this area to "market regulation personnel."

The following chart identified other specific changes:

Washington proposal	NAIC Model (October 2004)
Sec. 1. Short Title	Sec. 1. Short Title
Market Regulation and Surveillance law	Market Conduct Surveillance law
Sec. 2. Purpose and Legislative Intent	Sec. 2. Purpose and Legislative Intent
(no substantive change)	
Sec. 3. Scope	
New – no scope in model.	
Sec. 4. Definitions	Sec. 3. Definitions
(1) add definition of best practices organization	

(4) add definition of insurer	
(8) conforms definition of NAIC to RCW 48.02.140	(F) NAIC definition
(16) add definition of "insurance compliance self-evaluative audit"	
(17) add definition of "insurance compliance self-evaluative audit document"	
Sec. 5. Market Analysis Procedures	Sec. 4. Market Analysis Procedures
(1)(a) new – moved from Sec. 11(A) of NAIC model	
(b) new – moved from Sec. 11(B) of NAIC model	
(2) New – requires filing of market conduct annual statement – provides penalties	
(3)(a) no substantive change	(A)(1)
(b) no substantive change	(2)
(4)(a) no substantive change	(B)(1)
(i) no substantive change	(a)
(ii) no substantive change	(b)
(iii) no substantive change	(c)
(iv) no substantive change	(d)
(v) no substantive change	(e)
(vi) added to model requirement that Commissioner be satisfied that process is likely to provide reasonable assurance of compliance with law	(f)
(vii) no substantive change	(g)
(viii) new – added Investigations	
(b) language modified – meaning same as model	(2)
(5) no substantive change	(C)
(6) New – authority to examine MGA or others if necessary for insurer examination	
Sec. 6. Protocols for Market Action	Sec. 5. Protocols for Market Conduct Actions
(1) deleted model language on infrequent or unintentional random errors	(A)
(2)(a) no substantive change	(B)(1)
(b) no substantive change	(2)

(3) no substantive change	(C)
(4) model language using Option One – with slight modification	(D)
Sec. 7. On-Site Market Conduct Examinations	Sec. 6. Targeted One-Site Market Conduct Examinations
(1) removed "targeted" from model language to allow full-scope exam if warranted by circumstances	(A)
	(B) Deleted from WA proposal – same language is contained in WA proposal Sec. 5(1)
(2) no substantive change	(C)
(3) no substantive change	(D)
(a) no substantive change	(1)(a)
(b) no substantive change	(b)
(c) no substantive change	(c)
(d) no substantive change	(d)
(e) no substantive change	(e)
(f) no substantive change	(f)
(g) only substantive change in these subsections is to remove "targeted" from model to allow full-scope exam when warranted	(g)
(h) no substantive change	(h)
(i) no substantive change	(i)
(4) no substantive change	(2)
(5) no substantive change	(3)
(6) no substantive change	(4)
(7) no substantive change	(E)
(8) no substantive change	(F)
(9) no substantive change	(G)
(10)(a) model section re-written to adopt current chapter 48.03 RCW requirements for examination report adoption	(H)(1)(a)
	(b)
	(c)
(b) no substantive change	(2)
	(I) This subsection of model was deleted as duplicative of WA proposal Sec. 7(10) which adopts chapter 48.03 RCW
(11)(a) no substantive change	(J)(1)

(b) no substantive change	(2)
(i) no substantive change	(a)
(ii) no substantive change	(b)
(iii) no substantive change	(c)
(iv) no substantive change	(d)
(v) no substantive change	(e)
(c) no substantive change	(3)
Sec. 8. Access to Records and Information	Sec. 7. Confidentiality Requirements
(1) same as first sentence of model Sec. 7(A)	(A)
(2) same as second sentence of model Sec. 7(A)	
(3) new – see 48.03.030(1)	
	Third sentence of this section included as Sec. 9
	of WA proposal.
(4) no substantive change	(B)
(5) no substantive change	(C)
(6)(a) no substantive change	(D)(1)
(b) no substantive change	(2)
(c) no substantive change	(3)
Sec. 9. Confidentiality	
(1) Adds language that was third sentence of Sec. 7(A) of model.	
(2) Provides for confidentiality of draft examination reports.	
(3) Provides confidentiality of insurance compliance self-evaluative audit	
document provided to Commissioner.	
(4) Disclosure to Commissioner of insurance compliance self-evaluative audit	
document does not waive otherwise applicable privileges	
Sec. 10. Market Regulation Personnel	Sec. 8. Market Conduct Surveillance Personnel
(1) no substantive change.	(A)
(2) Model	(B)
modified to allow retention of market regulation personnel who have	
not been employed by an insurer within the last 5 years	
(a) no substantive change	(1)

(b) no substantive change	(2)
(c) no substantive change	(3)
(d) no substantive change	(4)
Sec. 11. Immunity for Market Conduct Surveillance Personnel	Sec. 9. Immunity for Market Conduct Surveillance Personnel
(1) Added "market regulation personnel" to list of those with immunity.	(A)
(2) Added "market regulation personnel" to list of those with immunity.	(B)
(3) no substantive change	(C)
(4) no substantive change	(D)
Sec. 12. Fines and Penalties	Sec. 10. Fines and Penalties
(1) Deleted from model reference to other law provisions	(A)
(2) Deleted from model "that promote high ethical standards of conduct in the market place" because that phrase is included in definition of best practices organization [WA proposal Sec. 4(1)]	(B)
	Sec. 11.
	(A) Deleted – included in WA proposal Sec. 5(1)(a)
	(B) Deleted – included in WA proposal Sec. 5(1)(b)
Sec. 13. Coordination with Other State Insurance Regulators Through the NAIC	Sec. 12. Coordination with Other States Through the NAIC
(1) Model language with added requirement for coordination according to NAIC guidelines.	
(2) New – allows Commissioner to accept market action in other state in lieu of separate action in Washington	
Sec. 14. Additional Duties of the Commissioner	Sec. 13. Additional Duties of the Commissioner
	(A) Deleted – duplicates RCW 48.02.160
adopts language of Model Sec. 13(B)	(B)
cc: Beth Berendt	
Mary Clogston	

Leslie Krier